

From: Dale Pontius
To: Microsoft ATR
Date: 1/27/02 8:53pm
Subject: Microsoft Settlement

To Whom it my concern:

I am writing my comment on the proposed settlement of the United States vs Microsoft antitrust case, under the Tunny Act.

I do not believe the proposed settlement provides for any significant benefit to the consumer or improvement in the competitive landscape of the software industry.

Microsoft's past and present actions in monopoly maintenance and extension have two key bases: control of Standards such as Programming Interfaces and file formats, and preload agreements to have their Operating System installed on the vast majority of new PCs sold. I will address inadequacies of the proposed settlement on each point, in turn.

The issue of Interface Documentation should parallel cases of ATT and IBM, but it falls far short. First, by "Interface" I mean more than just the "Windows API" cited in the settlement. This should include not just "Applications Program Interfaces" (APIs), but "Systems Programming Interfaces" to enhance competition in middleware development, "Wire Protocols" to preserve competition in Internet, multimedia, and communications development, and "File Formats" to restore competition in Office software, as well as other areas.

To expand on the "File Formats" for a moment, my neighbor was recently 'forced' to purchase Microsoft Office, even though he prefers Word Perfect. He needs to exchange documents with colleagues, they use Microsoft Word. Word Perfect offers import/export abilities for Microsoft Word documents, but because the File Format changes subtly (and unnecessarily, for any reason other than anti-competition, according to some) with every release, it is impossible for any other company's product to interoperate correctly.

Standards are supposed to be stable, and allow interoperation. That was the effect of the antitrust actions against ATT and IBM. Telephone and computer interfaces were properly opened and documented, and certain amounts (6 months review) of stability inserted to allow competition. To me, Microsoft's "use" of standards seems akin to either malfeasance or misfeasance. Either they are wielding standards as a weapon, to hinder competitors, or they are terribly inept at crafting stable standards. In either case, it is dangerous and counterproductive to leave the situation as-is.

The proposed settlement seems oriented more toward allowing inspection

of source code by corporate competitors, and makes numerous allowances for exclusion. To begin, merely inspecting source code can give insight, but is far from proper documentation. Second, in the PC Operating System marketplace, the only competitor Microsoft has is not a corporation at all, but a loose assortment of volunteer individuals. That the /only /significant PC OS competitor is based on volunteers and free software is telling, and the proposed remedy does nothing to assist this effort, rather it may well hinder it.

My second main basis of contention was preload agreements. If I buy a PC from a large manufacture, I essentially have no choice but to receive Windows. While a previous court decision outlawed per-CPU licensing, Microsoft was free to set contracts that essentially amounted to the same thing. They can also the discount rate (price below retail) to enforce their terms, because the profit margin is so small, and a good discount on Windows can make the difference between profit and loss. The PC manufacturer cannot refund my money, and nor will Microsoft. (because Microsoft's customer is the PC maker, not me.) So essentially, Microsoft has guaranteed income based on other companies' production, also not based on their performance. What other company enjoys substantial income independent of their actions? How can /any company/ compete effectively with them?

For this problem, I would suggest the additional remedies: The cost of Windows must be itemized as part of the cost of the PC visible to the customer, and Microsoft must refund that cost upon request and suitable assurance that the Windows license has not been used by the customer. Perhaps the customer needs a 'decline license' option upon first boot.

A final item related to this OS license issue. Microsoft must not force conditions upon PC manufacturers that will render PCs unbootable by any OS other than Windows. Microsoft already puts obstacles in the way of multi-booting Windows alongside other OSs, I've lived with them for years. At the very least, those obstacles cannot be allowed to become more onerous.

Thank you,
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